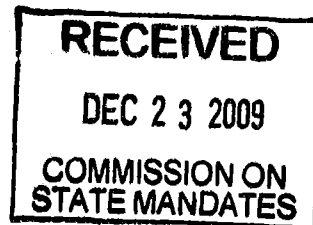




CITY OF NEWPORT BEACH

ADMINISTRATIVE SERVICES Revenue Division



RESPONSE TO DRAFT STAFF ANALYSIS

Government Code Sections 17553, 17557, and 17564, as Amended by
Statutes 2004, Chapter 890 (Assembly Bill No. 2856);
California Code of Regulations, Title 2, Sections 1183 and 1183.13
(Register 2005, No. 36, effective September 6, 2005)

Mandate Reimbursement Process II

05-TC-05

On Remand from *California School Boards Assoc. v. State of California*
(2009) 171 Cal.App.4th 1183; Judgment and Peremptory Writ of Mandate Issued by
Sacramento County Superior Court, Case No. 06CS01335

City of Newport Beach, Claimant

INTRODUCTION:

Test claimant the City of Newport Beach submits the following in response to the Draft Staff Analysis issued by Commission staff on December 8, 2009. Test Claimant concurs with the analysis yet reiterates its prior argument and notes that even without directive from the appellate court, test claimant is still successful.

Analysis

Commission staff relied on *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 finding a mandate as based upon practical compulsion:

The court concluded by stating the following:
However, the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. *It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.* (Emphasis added.)

In this case, the filing of a test claim that complies with the new filing requirements is the *only* means to enforce the constitutional right to reimbursement for costs incurred in complying with a reimbursable state-mandated program. (footnote omitted.)

Yet, even without this analysis, test claimant prevails on the theory of statutory construction. The Third District Court of Appeal struck a portion of Government Code section 17556, Subdivision (f) leaving an exception to the finding of a mandate for those duties that are “necessary to implement” an approved ballot measure. The Plain Language rule states: A statute that is clear and unambiguous on its face, that is, where the language is plain and admits no more than one meaning, there is no need for interpretation.¹ And, the Whole Statute rule adds: Statutes are passed as a whole and thus must be construed as a whole². applying these to the instant case, the term “necessary to implement” means “indispensable or an absolute physical necessity” rather than merely reasonable.

CONCLUSION:

The City of Newport Beach supports the Draft Staff analysis and urges its adoption.

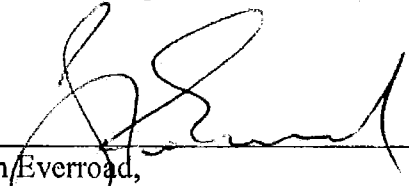
¹ *Redevelopment Agency of City of Sacramento v. Malaki* (1963) 216 Cal.App.2d 480, 487-488.

² *Mundy v. Superior Court* (1995) 31 Cal.App.4th 1396, 1405.

CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and correct, except as to those matters stated upon information and belief and as to those matters, I believe them to be true.

Executed this 17 day of December, 2009, at Newport Beach, California, by:



Glen Everroad,
Revenue Manager
City of Newport Beach

PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670.

On December 23, 2009, I served:

RESPONSE TO DRAFT STAFF ANALYSIS

Government Code Sections 17553, 17557, and 17564, as Amended by
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California Code of Regulations, Title 2, Sections 1183 and 1183.13
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City of Newport Beach, Claimant

by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 23rd day of December, 2009, at Rancho Cordova, California.


Declarant

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